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Renuka Towers Sdn Bhd v Ketua Pengarah Tanah dan Galian Wilayah Persekutuan Kuala Lumpur & Ors

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HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO 21NCVC-5–01 OF 2014
MOHD FIRUZ J
26 AUGUST 2022

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Tort — Breach of statutory duty and negligence — Register of Land Titles — Whether State Director of Lands and Mines failed to ensure land registration system in State was accurate, reliable, safe and free from manipulation by unscrupulous elements — Whether innocent parties put to loss and damage by reliance upon information contained in the land register were entitled to obtain appropriate redress against land authorities and the government

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After carrying out a land search to ensure that a piece of land it intended to buy — bearing the title description Geran 27889 Lot No 152 — in Section 58, Kuala Lumpur was free of encumbrances, the plaintiff proceeded to buy the land from its owner for RM15m. The land office subsequently issued to the plaintiff the title deed for Geran 27889 for Lot 152 after the transfer of the land to its name had been registered. When the plaintiff subsequently did a land search for the purpose of developing the land, it was shocked to find that the land office had cancelled Geran 27889 without giving any notice. The plaintiff applied to the High Court for a declaration that the cancellation was null and void, ultra vires and of no legal effect and that the plaintiff was the lawful proprietor of the land. Alternatively, the plaintiff claimed that the defendants' negligence and breach of statutory duty in failing to maintain a safe and reliable register of land titles and other records at the Kuala Lumpur land office had caused the plaintiff to suffer loss and damages. The damages the plaintiff claimed included the stamp duty, quit rent and assessment it had paid on the land as well as the purchase price of RM15m. In denying the plaintiff's claims, the defendants contended that Lot 152 was actually held under Geran 17752 and that Geran 27889 did not exist. The defendants said the issuance of Geran 27889 was the result of fraud that had taken place within the land office. At the trial, the plaintiff obtained an order from the court directing the defendants to produce, inter alia, both the manual and computerised original versions of Geran 17752 and Geran 27889 but the order was not complied with. At the conclusion of the trial, the defendants took the position that the plaintiff's claim ought to be dismissed, inter alia, because it was time-barred unders 2(a) of the Public Authorities Protection Act 1948 and also because the claim could not be legally enforced because Geran 27889 did not exist.

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Held, allowing the plaintiff's alternative claim:

(1) The court was satisfied that the plaintiff had complied with all legal formalities and done all things necessary to cause the land to be transferred to its name free of encumbrances (see paras 49–52).

(2) On the plaintiff's alternative claim, which was premised on the common law tort of negligence and breach of statutory duty, the plaintiff was entitled to a declaration that the defendants' act of cancelling the document of title concerning the subject land in the records of the Kuala Lumpur land office was null and void, ultra vires and of no legal effect. The plaintiff was entitled to be recognised and/or be registered as the lawful proprietor of the subject land pursuant to its rights under art 13 of the Federal Constitution and the National Land Code (see para 53).

(3) That the plaintiff's alternative claim was not time-barred under s 2(a) of the Public Authorities Protection Act was already determined at an earlier stage of the case when the defendants' application to strike out the plaintiff's claim on that ground was dismissed by the court (see para 57).

(4) The second defendant had clearly breached its statutory duty to maintain a system of registration of land titles that was accurate and safe for members of the public, including the plaintiff, to rely upon for purposes of any dealings. The fact that the second defendant had entered the private caveat by Cabaran Performa Sdn Bhd on Lot 152, the entry of the registrar's caveat and the registration of the transfer of Lot 152 from the vendor to the plaintiff clearly showed that Lot 152 bearing Geran 27889 (and not 17752) officially existed in the second defendant's registration system (see para 57).

(5) The reliefs for special and general damages with interest sought by the plaintiff were inappropriate. In a negligence claim, the damages suffered by a plaintiff had to be foreseeable and not too remote. Damages for the sums of RM15m and RM87.5m sought by the plaintiff were not foreseeable and were too remote. Any loss of the offer from Macalister was pure economic loss which was not recoverable under our jurisprudence in negligence (see para 57).

(6) Adverse inference had to be invoked against the defendants for failing to produce the documents requested for by the plaintiff via the order for discovery. There was also failure on the part of the first defendant to produce any evidence that it was the owner of Geran 17752 (see paras 58–59).

(7) The second defendant's negligence had allowed unscrupulous parties (in all probability, individuals working within the organisation) to infiltrate its land registration system and create fictitious land titles similar to Geran 27889 and cause the issuance of land titles using genuine security

paper kept within the organisation. These unscrupulous parties were able to create a database showing that the land concerned existed. This was evident from the results of the land searches done not only by the plaintiff but also by the defendants. The acts of the third parties even fooled the second defendant's computerised registration system and its personnel and enabled the system to receive transactions such as the lodging of the caveat by Cabaran Performa, the transfer of the land from the vendor to the plaintiff and the entry of the registrar's caveat. Due to no fault of the plaintiff, its title was cancelled without any notice or explanation causing the plaintiff to suffer tremendous loss and damages as a result. Based on all the facts and circumstances of the case, the cancellation of Geran 27889 by the second defendant was wrong in law and void ab initio. Accordingly, the title to Geran 17752 had to be cancelled and the plaintiff restored as the registered proprietor and true legal and beneficial owner of Lot 152 (see paras 66–67).

[Bahasa Malaysia summary

Selepas menjalankan satu carian tanah untuk memastikan sebidang tanah yang ingin di beli — memiliki gambaran hakmilik Geran 27889 Lot No 152 — di Seksyen 58, Kuala Lumpur bebas daripada apa-apa halangan, plaintif telah membeli tanah tersebut daripada pemiliknya untuk jumlah RM15 juta. Pejabat tanah kemudiannya mengeluarkan kepada plaintif geran hakmilik untuk Geran 27889 untuk Lot 152 selepas pindahmilik tanah kepada namanya telah didaftarkan. Apabila plaintif kemudiannya membuat carian tanah untuk tujuan memajukan tanah tersebut, dia terkejut apabila mendapati bahawa pejabat tanah telah membatalkan Geran 27889 tanpa memberikan apa-apa notis. Plaintif memohon kepada Mahkamah Tinggi untuk satu pengisytiharan bahawa pembatalan tersebut adalah terbatal dan tidak sah, ultra vires dan tiada kesan undang-undang dan bahawa plaintif adalah pemilik sah tanah tersebut. Secara alternatif, plaintif menuntut bahawa kecuaian defendan dan pelanggaran tanggungjawab statutori apabila gagal untuk mengekalkan daftar tanah dan rekod lain yang selamat dan mempunyai kebergantungan telah menyebabkan plaintif mengalami kerugian. Kerugian yang dituntut plaintif termasuklah duti setem, cukai tanah dan taksiran yang telah dibayar atas tanah tersebut dan juga harga belian RM15 juta. Dalam menafikan tuntutan plaintif, defendan mengatakan bahawa Lot 152 sebenarnya dipegang di bawah Geran 17752 dan bahawa Geran 27889 tidak wujud. Defendan mengatakan bahawa pengeluaran Geran 27889 adalah hasil penipuan yang telah berlaku di pejabat tanah. Sewaktu perbicaraan, plaintif telah mendapatkan perintah daripada mahkamah mengarahkan defendan untuk mengemukakan antara lain, panduan dan versi asal yang dikomputerkan Geran 17752 dan Geran 27889 namun perintah tersebut tidak dipatuhi. Sewaktu penyelesaian perbicaraan, defendan mengambil kedudukan bahawa tuntutan plaintif sepatutnya ditolak, antara lain, kerana ianya dihalang oleh had masa di bawah s 2(a) Akta Perlindungan Pihak Berkuasa Awam 1948 dan

juga kerana tuntutan tersebut tidak boleh dikuatkuasakan di sisi undang-undang kerana Geran 27889 tidak wujud.

Diputuskan, membenarkan tuntutan alternatif plaintif:

(1) Mahkamah berpuas hati bahawa plaintif telah memenuhi semua formaliti perundangan dan melakukan semua perkara yang perlu untuk menyebabkan tanah dipindahkan kepada namanya bebas daripada semua halangan (lihat perenggan 49–52)

(2) Untuk tuntutan alternatif plaintif, yang berpremiskan tort kecuaian dan pelanggaran tanggungjawab statutori, plaintif berhak untuk satu pengisytiharan bahawa tindakan defendan untuk membatalkan dokumen hakmilik berkaitan dengan tanah tersebut dalam rekod pejabat tanah kuala lumpur adalah terbatal dan tidak sah, ultra vires, dan tiada kesan undang-undang. Plaintif berhak untuk diiktiraf dan/atau didaftarkan sebagai pemilik sah tanah tersebut selaras dengan haknya di bawah perkara 13 Perlembagaan Persekutuan dan Kanun Tanah Negara (lihat perenggan 53)

(3) Tuntutan alternatif plaintif tidak dihalang oleh had masa di bawah s 2(a) Akta Perlindungan Pihak Berkuasa Awam kerana telahpun ditentukan pada peringkat lebih awal kes apabila permohonan defendan untuk membatalkan tuntutan plaintif atas alasan tersebut telah ditolak oleh mahkamah (lihat perenggan 57)

(4) Defendan kedua secara jelas telah melanggar tanggungjawab statutorinya untuk mengekalkan sistem pendaftaran daftar tanah yang tepat dan selamat untuk orang awam, termasuklah plaintif, bergantung kepada untuk tujuan apa-apa urusan. Fakta bahawa defendan kedua telah memasukkan kaveat peribadi oleh Cabaran Performa Sdn Bhd atas Lot 152, dan kemasukan kaveat pendaftar dan pendataran pemindahan Lot 152 daripada penjual kepada plaintif dengan jelas menunjukkan bahawa Lot 152 yang mempunyai Geran 27889 (dan bukannya 17752) wujud secara rasmi dalam sistem pendaftaran defendan kedua (lihat perenggan 52).

(5) Relif untuk ganti rugi khas dan spesifik dengan faedah yang dipohon oleh plaintif adalah tidak sesuai. Dalam tuntutan kecuaian, kerugian yang dialami oleh plaintif hendaklah boleh dijangka dan tidak terlalu jauh. Ganti rugi dalam jumlah RM15 juta dan RM87.5 juta yang dipohon oleh plaintif tidak boleh dijangka dan adalah terlalu jauh. Apa-apa kerugian daripada tawaran dari Macalister merupakan kerugian ekonomi semata-mata dan tidak boleh didapatkan semula di bawah perundangan kecuaian kita (lihat perenggan 57).

(6) Inferens menentang perlulah diguna pakai terhadap defendan kerana gagal untuk mengemukakan dokumen yang dipohon oleh plaintif

melalui perintah pendedahan. Wujud juga kegagalan di pihak defendan pertama untuk mengemukakan apa-apa keterangan bahawa dia merupakan pemilik Geran 17752 (lihat perenggan 58–59)

(7) Kecuaian defendan kedua telah membolehkan pihak tidak berprinsip (dalam kebarangkalian tinggi individu yang bekerja dalam organisasi tersebut) untuk memasuki sistem pendaftaran tanahnya dan mewujudkan hakmilik tanah yang direka seperti Geran 27889 dan menyebabkan pengeluaran hakmilik tanah melalui kertas keselamatan yang benar yang disimpan didalam organisasi tersebut. Pihak yang tidak berprinsip ini mampu untuk mereka satu pangkalan maklumat yang menunjukkan bahawa tanah tersebut wujud. Ini adalah jelas daripada hasil carian tanah yang dilakukan bukan sahaja oleh plaintif tetapi juga defendan. Pelakuan pihak ketiga turut menipu sistem pendaftaran berkomputer defendan kedua dan kakitangannya dan membolehkan sistem untuk menerima transaksi seperti kemasukan kaveat oleh Cabaran Performa, pemindahan tanah daripada penjual kepada plaintif dan kemasukkan kaveat pendaftar. Bukan atas kesalahan plaintif, hakmilik tersebut telah dibatalkan tanpa apa-apa notis atau penjelasan menyebabkan plaintif untuk mengalami kerugian yang besar. Berdasarkan semua fakta dan keadaan kes, pembatalan Geran 27889 oleh defendan kedua adalah salah disisi undang-undang dan terbatal daripada mula. Oleh yang demikian, hak milik kepada Geran 17752 hendaklah dibatalkan dan plaintif dikembalikan sebagai pemilik berdaftar dan sebagai pemilik benefisial dan sebenar Lot 152 (lihat perenggan 66–67).]

Cases referred to

Arab Malaysian Finance Berhad v Stephen Phoa Cheng Loon & Ors [2003] 1 MLJ 567; [2003] 1 CLJ 585, CA (refd)

Crimmins v Stevedoring Industry Finance Committee [1999] 200 CLR 1, HC (refd)

Dr Lourdes Dava Raj a/l Curuz Durai Raj v Dr Milton Lum Siew Wah & Anor [2020] 5 MLJ 185, FC (refd)

Lay Kee Tee & Yang lain v Kerajaan Malaysia & yang Lain [2005] 3 MLJ 576; [2004] 8 CLJ 390, FC (refd)

Lee Yee Wuen v Lee Kai Wuen & Ors [2020] MLJU 1902, CA (folld)

Lim Eng Kay v Jaafar Mohamed Said [1982] 2 MLJ 156; [1982] CLJ Rep 190, FC (folld)

Majlis Perbandaran Ampang Jaya v Stephen Phoa Cheng Loon [2006] 1 MLJ 710; [2006] 2 CLJ 1, FC (refd)

Pendaftar Hakmilik, Pejabat Pendaftaran Wilayah Persekutuan Kuala Lumpur & Anor v Poh Yang Hong [2016] 6 MLJ 413; [2016] 9 CLJ 297, FC (folld)

Pentadbir Tanah Daerah, Pontian & Ors v Ossons Ventures Sdn Bhd [2009] 6 MLJ 182; [2009] 6 CLJ 713, CA (folld)

Shayo (M) Sdn Bhd v Nurlieda bt Sidek & Ors [2013] 7 MLJ 755, HC (folld)

Uptown Properties Sdn Bhd v Pentadbir Tanah Wilayah Persekutuan & Ors [2012] 8 MLJ 713, HC (folld)

Legislation referred to

Companies Act 1965 (repealed by the Companies Act 2016)
Federal Constitution art 13
Federal Territory (Modification of National Land Code) Order 1974
Government Proceedings Act ss 5, 13
National Land Code ss 6, 8, 13, 16, 22, 27, 89, 215(2), 340, 380
Penal Code s 471
Public Authorities Protection Act s 2(a), (b)
Rules of Court 2012 O 18 r 19(1)

Muhammad Shafee Abdullah (with Tersaim Lall and Nor farhah) (Shafee & Co) for the plaintiff.
Siti Badariah bin Mohd Yusof (with Norazrin bt Mohamad Yusoff) (Attorney General's Chambers) for the defendants.

Mohd Firuz J:

[1] The following is the court's decision and the end of a full trial. Trial commenced before my predecessor Justice Siti Khadijah Bajunid, who heard the testimony of the plaintiff's first witness: PW1. Upon Justice Siti Khadijah's transfer to the High Court of Melaka, trial continued before me.

[2] In total there were four witnesses called, three by the plaintiff and one by the defendants. By agreement of both parties, the witness statement DW2 was also tendered with the plaintiff electing not to cross-examine upon having read the said witness statement.

[3] Having reviewed the pleadings of all parties, the evidence adduced at the trial both oral and documentary, and upon reviewing the submissions of counsel, this court had on 20 May 2022 allowed the plaintiff's alternative claim.

[4] The defendants have since lodged an appeal against the above decision by way of a notice of appeal dated 16 June 2021 to the Court of Appeal. The following are my grounds of judgment.

THE PARTIES

[5] The plaintiff is a company incorporated under the Companies Act 1965. On 5 June 2007, the plaintiff entered into a sale and purchase with Revenue Beam Sdn Bhd ('vendor'), to purchase a piece of land held under the

description of Geran 27889 ('Grant 27889') Lot No 152 Seksyen 58 Negeri Wilayah Persekutuan Daerah Kuala Lumpur, Bandar Kuala Lumpur ('Lot 152'). Thereafter, pursuant to the procedures set out under the National Land Code and that of the second defendant, the plaintiff became the registered proprietor of Lot 152.

[6] The first, second and third defendants are public officers, whilst the fourth defendant is the employer of the first, second and third defendants.

BACKGROUND FACTS

[7] As stated earlier, circa June 2006 the plaintiff entered into a sale and purchase agreement with Revenue Beam to purchase the property. For this purpose, the plaintiff's lawyers/agents conducted a land search dated 5 June 2007 as shown in exh D16 of Lot 152 at the Kuala Lumpur Land Office (KL Land Office) to confirm that the vendor was in fact the registered proprietor.

[8] Pursuant to searches conducted at the KL Land Office, the search result confirmed that the vendor was indeed the registered proprietor of Lot 152. Thereafter, the plaintiff paid the full purchase price for Lot 152 to the vendor and completed all formalities in respect of the sale and purchase agreement.

[9] The plaintiff also completed all formalities required under the NLC and that required by the KL Land Office. Having done so, Lot 152 was duly transferred to the plaintiff who became its registered proprietor on 17 July 2007. In this regard, the KL Land Office proceeded to issue Grant 27889 for Lot 152 to the plaintiff.

[10] Having purchased Lot 152, the plaintiff wanted to develop it. However, the plaintiff hit a roadblock and was unable to secure the necessary development approvals from the authorities as Lot 152 became subject to police investigations in respect of an overlapping ownership of the land;

[11] On or around 18 February 2008, a search at the KL Land Office showed that two registrar's caveats had been lodged on Lot 152. Further search conducted at the KL Land Office on the 24 October 2011 revealed that Grant 27889 had been cancelled by the first and second defendants without any notice to them.

RELIEFS SOUGHT BY THE PLAINTIFF

[12] The plaintiff alleged that Grant 27889 was cancelled without giving them the right to be heard. Hence, they sought for a declaration that the

cancellation of the said grant was null and void and ultra vires and of no legal effect. The plaintiff also asked to be recognised and registered as the lawful proprietor of Lot 152.

[13] In the alternative, the plaintiff claims that the plaintiff relied on the search results provided by the KL Land Office that the vendor was the registered proprietor of Lot 152 and that the said land was free from encumbrances. It is the plaintiff's stand that the defendants were in breach of the provisions in Part 27 of the NLC for failing to properly maintain a register of titles and other records at the KL Land Office and as a result the plaintiff suffered loss and damages. The plaintiff is also claiming special damages including a refund of monies paid to the Inland Revenue Board and the KL Land Office and the entire purchase price in the sum of RM15m.

[14] It is the plaintiff's case that:

(a) the first, second and third defendants are public officers under s 16 of the National Land Code ('the NLC') and are responsible for the system of land registration (para 6 SOC);

(b) the KL Land Office is under the purview of the first and second defendants (para 15 SOC); and

(c) the fourth defendant is the Government of Malaysia (para 5 SOC) who is vicariously liable for all actions and omissions of the other defendants.

[15] With reference to particulars of negligence committed by the defendants, the plaintiff has pleaded the following:

> Particulars of Negligence of the first and second defendants and/or third defendant
>
> 32.1 failing to properly maintain a register of title, Presentation Book or Correction Notebook in the Land Office in Kuala Lumpur Wilayah Persekutuan relating to the subject land;
>
> 32.2 failing to properly maintain any instrument of dealing or application presented or made to or in the custody of the Registrar relating to the subject land;
>
> 32.3 failing to render an accurate account for searches conducted at the Land office in Kuala Lumpur by the Plaintiff and/or their agents;
>
> 32.4 failing to specify correctly/accurately or at all the person or body for the time being registered as the proprietor of the subject land and indicating the same correctly and/or accurately in that face;
>
> 32.5 failing to render an accurate summary of matters which are still effective, all memorials and other entries on the registered document of title relating to the subject land;
>
> 32.6 failing to specify accurately or at all the express conditions and restrictions in interest to which the subject land is subject to;

32.7 failing to indicate whether at the time of issuance of the certificate of search as defined under section 358 of the National Land Code the following:

(i) any instrument of dealing has been present for registration on the register document of title to the land;

(ii) any application for the endorsement or entry of any matter on the document has been made;

(iii) a copy of any orders relating to the land or any share or interest therein has been presented to or served on the Registrar.

32.8 failing to ensure that the particulars of the subject land as per the registered records of the Land Registry, Wilayah Persekutuan, Kuala Lumpur are at all times accurate;

32.9 failing to ensure that the particulars of the subject land as per the registered records of the Land Registry, Wilayah Persekutuan, Kuala Lumpur and as furnished by the first and second defendants to the Plaintiff on payment of a fee, contain accurate details of the Land which can be relied upon by the Plaintiff;

32.10 maintaining inconsistent and/or contradictory entries in respect of particulars of land registered with the Registry and in consequence, providing the plaintiff, information relation to the subject land on which a search is conducted on payment of the requisite fee, and which information is not true or incorrect to the detriment of the Plaintiff.

THE DEFENDANT'S CASE

[16] The first defendant being the Director General of Jabatan Ketua Pengarah Tanah dan Galian (Persekutuan) (JKPTG) was appointed under s 6 of the National Land Code and exercise his powers and function in accordance with s 8 of the same Act.

[17] As a pioneer for the national land administration and management, JKPTG's role are:

(a) amending or improving of any provision of land law and legislation regarding with land administration;

(b) managing the records of federal government's property in land;

(c) to acquire alienated land for federal project purposes;

(d) tenancy and enforcement of federal goverment's real estate;

(e) management of small estate distribution.

[18] The second defendant is the Director of Pejabat Tanah dan Galian for the state of Wilayah Persekutuan Bandar Kuala Lumpur.

[19] The third defendant being the Land Executive Committee Wilayah Persekutuan was established under s 12(1) Constitution (Amendment) (No 2) Act 1973, Federal Territory (Modification of National Land Code) Order 1974 (PU(A) 56/74) and the delegation of powers under s 13 of the National Land Code (PU(B) 108/2003).

[20] The third defendant is a committee exercising the powers and functions as State Authority for Wilayah Persekutuan Kuala Lumpur, Labuan and Putrajaya such as reviewing subsequently make decisions for any applications or matters related to land situated in Wilayah Persekutuan which includes land acquisition, reservation, alienation and so forth.

[21] The fourth defendant is the Government of Malaysia and in any circumstances is only vicariously liable if the all the conditions under s 5 of the Government Proceedings Act (Act 359) is fulfilled.

[22] The enforcement of land registration System in Malaysia (Torrens System), in Peninsular Malaysia is executed by the Registrar or Land Administrator in the Pejabat Tanah dan Galian in each state accordingly. For Wilayah Persekutuan Kuala Lumpur, the power vested in the second defendant.

[23] Under the National Land Code, the title or interest of any such person or body shall not be indefeasible in these following circumstances:

(a) in any case of fraud or misrepresentation to which the person or body, or any agent of the person or body, was a party or privy; or

(b) where registration was obtained by forgery, or by means of an insufficient or void instrument; or

(c) where the title or interest was unlawfully acquired by the person or body in the purported exercise of any power or authority conferred by any written law.

[24] The second defendant is not under the supervision of the first defendant.

[25] The first and third defendants are unrelated in terms of power and involvement in cancelation of the registration held under Grant No 27889 Grant which was under the second defendant's jurisdiction.

[26] The first and third defendants does not perform any obligation under part twenty seven of the National Land Code.

[27] the first and third defendants are not related nor do they have any power relating to the caveat entry or the cancelation of registration held under Grant No 27889.

[28] Based on the second defendant's official record:

(a) two private land searches were conducted on 5 June 2007;

(b) one private land search was conducted on 6 June 2007;

(c) on 2 July 2007 the subject land was transferred and registered under plaintiff's name;

(d) Lot 152 is actually held under Grant No 17752 and the ownership vested in Federal Land Commissioner;

(e) two registrar's caveat were in fact entered on 27 July 2007 and 15 January 2008 under Perserahan No 10451/2007 and 484/2008 respectively;

(f) both of the registrar's caveats were never removed and were still in force until the registration of the Grant No 27889 was cancelled on 16 August 2010;

(g) one official land search was conducted on 24 October 2011; and

(h) Grant No 27889 was cancelled on 16 August 2010 in accordance with the provision of s 380 of the National Land Code.

[29] On 17 April 2008 a police report No THSL/012949/08 was lodged by second defendant's deputy director complaining that Grant No 27889 for Lot 152 Seksyen 58 Bandar Kuala Lumpur (Lot 152) was wrongfully entered in the 'Sistem Pendaftaran Tanah Berkomputer (SPTB)' in second defendant's office.

[30] Based on second defendant's official record:

(i) on 21 January 2019 the second defendant's had replied to the AG's prosecution division (commercial) inquiry as to the reason why both caveats on Grant No 27889 have to be maintained; and

(ii) Dato' Charan Dass a/l Sadhu Ram (IC No 540204–08–5411), who was the plaintiff's director and shareholder was accordingly charged for an offence under s 471 of the Penal Code for forgery and this case was still ongoing.

[31] The defendants denies the entire plaintiff's claims in the statement of claim including all of the said particulars for negligence of first, second and/or third defendants and the plaintiff has the burden of proving their case according to the law.

[32] In all circumstances the plaintiff is not entitled to the relief that it sought in para 31 in the statement of claim.

[33] The plaintiff has no right to the alternatives claim and the alternative claim sought is now statute barred based on time provided under Public Authorities Protection Act 1948 (Act 198).

[34] The plaintiff's claim should be dismissed with cost in accordance with s 2(b) of the Public Authorities Protection Act 1948 (Act 198).

ISSUES TO BE TRIED

[35] For purposes of the trial, the following issues to be tried were formulated by both parties herein:

(a) the plaintiff's main claim:

(i) whether the first and second defendants carried out any functions relating to the enforcement of the land registration system in the state of Wilayah Persekutuan;

(ii) whether the act of the second defendant in cancelling the title to the land held under Grant 27889 of Lot 152, Section 58 Negeri Wilayah Persekutuan, District of Kuala Lumpur, city of Kuala Lumpur is void, invalid and ultra vires and does not have any legal effect;

(iii) whether the plaintiff is entitled to the reliefs prayed in para 37(a), dan (b) of the statement of claim.

(b) the plaintiff's alternative claim:

(i) whether the first and second defendant exercise any function in relation to s 27 of the NLC?

(ii) whether the plaintiff's alternative claim based on the searches carried at the second defendant's office is time barred due to limitation?

(iii) whether the second defendant had any duty to the plaintiff for the search results allegedly carried out at the second defendant's office?

(iv) whether the second defendant breached that duty of care? and

(v) whether the plaintiff is entitled to the losses including special damages and is entitled to the reliefs sought under paras 37(c) to (h) of the amended statement of claim?

Withdrawal of criminal charges against the plaintiff's director

[36] In the midst of the trial, this court was informed that the public prosecutor had on first October 2018, withdrawn the criminal charges stated in para [30](ii) above against the plaintiff's director, Dato' Charan Dass a/l Sadhu Ram (PW1). Accordingly, the Kuala Lumpur Sessions Court ordered PW1 to be acquitted and discharged (the order of acquittal and discharge was admitted as P33). The charge against PW1 related to his purported involvement in procuring the issuance of the land title to Lot 152 (ie grant 27889) which the defendants contend was falsely created together with other individuals.

[37] The said decision by the public prosecutor to my mind had a huge impact on the defendants' case. Ipso facto, defendant's defense that the plaintiff had conspired with people in the Kuala Lumpur Land Office to obtain a false land title namely Grant 27889 is no longer tenable.

The plaintiff's discovery application during the trial

[38] On 6 December 2019, trial continued before me with the defendant's calling their sole witness, Puan Azura bt Abdul Rahman (DW1). It is pertinent to note that DW1 was the 'Ketua Penolong Pengarah Bahagian Pendaftaran' at the Director's office of PTG Wilayah Persekutuan (see DW1's witness statement in encl 35).

[39] With examination in chief of DW1 being concluded, learned counsel for the plaintiff proceeded to cross-examine DW1. The following is a summary of DW1's testimony whilst under cross-examination (the complete notes of proceedings for the trial on 6 December 2019 can be found in Annexure A):

(a) that she had conducted a research based on the records of both Grant 17752 and Grant 27889;

(b) for Grant 17752 she had checked with the '*fail pemberi milikan*' for Grant 17752. This file is still kept in the second defendant's office and that she can obtain the file, make copies and bring them to court. There is a possibility that the records are with the police department;

(c) there are also other documents that DW1 can print out from the second defendant's computer system. The documents will then be handed over to the Attorney General's Chambers;

(d) that the manual grant for Grant 17752 (the issue document of title @ IDT) also existed and that she could bring the same at the hearing on Monday 13 December 2019;

(e) that Grant 17752 has now been issued with a computerized grant (digitized);

(f) that she has never seen the manual grant for Grant 27889. By right the original manual grant should exist;

(g) that the computerised grant for Grant 27889 was printed out using the recognised departmental security paper;

(h) Grant 27889 could have been forged. This could only be done internally within the second defendant's premises and control;

(i) that all notations, endorsement, entry of caveat and withdrawal of caveat can likewise only be done internally through the second defendant's computer system which cannot be interfered with by outsiders; and

(j) that two officers from the second defendant were charged in court in relation to Grant 27889;

[40] Despite DW1's undertaking to produce the documents requested on the next trial date, no such documents were produced. This led to the plaintiff filing a formal application for discovery of the following documents related to Grant 27889 which are in the defendants' possession (encl 68):

(a) all records pertaining to Grant 17752 and Grant 27889;

(b) *'Semakan fail pemberi milikan tanah bagi* Grant 17752 dan Grant 27889';

(c) print out of '*semakan dalam system computer berkenaan Geran 17752 dan Geran 27889*';

(d) '*geran asal (manual) yang membawa Geran 17752 sebelum computerization*'; and

(e) '*Laporan kertas keselamatan Geran 27889*'.

[41] On 25 March 2021, this court allowed encl 68 but with a narrower scope. The defendants were then ordered to produce the documents sought by the plaintiff which included the original grant 27889 and the documents relating to the issuance of Grant 27889 to the first defendant. In an attempt to comply with the court's order, the defendants furnished the plaintiff with the following documents:

1	Surat permohonan daripada Pesuruhjaya Tanah Persekutuan (PTP) untuk memiliki tanah kerajaan Lot 158. Borang Permohonan Tanah Kerajaan (Jadual 1) yang ditandatangani oleh Pesuruhjaya Tanah Persekutuan disertakan.
2	Surat PTGKL kepada Setiausaha Negara, Bahagian Pengurusan Bangunan Kerajaan, JPM untuk menjelaskan bayaran permohonan sebanyak RM5.

3	Surat PTGKL kepada Perancang Dewan Bandaraya untuk memohon ulasan dan pandangan.
4	Surat ulangan kepada DBKL.
5	Surat ulangan kepada DBKL.
6	Laporan Pegawau Petempatan bagi Lot 158.
7	Surat daripada DBKL menyokong permohonan tanah kerajaan (Lot 158).
8	Pelan Akui PA14–103909 bagi ukuran semula Lot 158, Lot 45 dan Lot 152 (dahulunya Lot 126 dan Lot 137)
9	Surat PTGKL kepada Ketua Setiausaha Negara, Bahagian Pengurusan Bangunan Kerajaan, JPM untuk menjelaskan bayaran permohonan sebanyak RM5.
10	Pelan yang menunjukka kedudukan tanah yang dimohon.
11	Surat PTGKL kepada Perancang Dewan Bandaraya untuk memohon ulasan dan pandangan.
12	Surat daripada DBKL menyatakan tiada halangan terhadap permohonan tanah kerajaan Lot 126 dan Lot 137 Seksyen 58 Bandar Kuala Lumpur.
13	Laporan Pegawai Petempatan bagi Lot 126 dan Lot 137.
14	Surat permohonan daripada PTP untuk memiliki tanah kerajaan Lot 45, Borang Permohonan Tanah Kerajaan (Jadual 1) yang ditandatangani oleh Pesuruhjaya Tanah Persekutuan disertakan.
15	Surat PTGKL kepada Ketua Setiausaha Negara, Bahagian Pengurusan Bangunan Kerajaan, JPM untuk menjelaskan bayaran permohonan sebanyak RM5.
16	Surat PTGKL kepada Perancang Dewan Bandaraya untuk memohon ulasan dan pandangan.
17	Surat ulangan kepada DBKL.
18	Surat daripada DBKL menyatakan tiada halangan terhadap permohonan tanah kerajaan Lot 45 Seksyen 58 Bandar Kuala Lumpur.
19	Laporan Pegawai Petempatan bagi Lot 45.
20	Pelan berlorek bagi Lot 158 (1 plot), 126 & 137 (1 plot) and 45 (1 plot) Seksyen 58 Bandar Kuala Lumpur.
21	Draf kertas mesyuarat Jawatankuasa Kerja Tanah Wilayah Persekutuan Kuala Lumpur.
22	Kertas Mesyuarat Jawatankuasa Kerja Tanah Wilayah Persekutuan Kuala Lumpur Bil 7670/303/88.
23	Cabutan Minit Mesyuarat Jawatankuasa Kerja Tanah Wilayah Persekutuan Kuala Lumpur Yang ke 304/88 pada 26/2/1988.
24	Notis Genap Masa Hasil Tanah Dibayar (Borang 5A) bagi Lot 137 & 126, 158 & 45.

25	Surat pertanyaan daripada PTP berhubung status pendaftaran hakmilik.
26	Surat PTGKL kepada PTP.
27	Surat PTP kepada Ketua Setiausaha Negara.
28	Surat daripada Bahagian Pengurusan Bangunan-Bangunan Kerajaan kepada PTP.
29	Surat PTGKL kepada Ketua Setiausaha Negara.
30	Surat PTP kepada PTGKL.
31	Surat daripada Bahagian Pengurusan Bangunan-Bangunan Kerajaan kepada PTGKL.
32	Surat PTGKL kepada PTP.
33	Surat PTGKL kepada Jabatan Ukur dan Pemetaan Malaysia (JUPEM).
34	Surat PTGKL kepada Ketua Setiausaha, Kementerian kebudayaan dan Pelancongan.
35	Surat Setiausaha Jawatankuasa Kerja Tanah Wilayah Persekutuan Kuala Lumpur.
36	Surat PTGKL kepada JUPEM.
37	Surat JUPEM kepada PTGKL.
38	Surat PTGKL kepada Ketua Setiausaha, Kementerian Kebudayaan dan Pelancongan.
39	Surat PTGKL kepada Ketua Setiausaha, Kementerian Kebudayaan dan Pelancongan.
40	Surat PTGKL kepada JUPEM.
41	Surat JUPEM kepada PTGKL

[42] Having received the documents from the defendants, the plaintiff highlighted to this court that the documents supplied were not what it was seeking and were irrelevant to their application. The plaintiff also took the position the documents supplied were not the documents mentioned by DW1 in her testimony on 6 December 2019. Under the circumstances, the plaintiff's stated that they reserve the right to invoke the presumption of adverse inference for the defendants' failure or refusal to supply the documents sought at the end of the trial.

[43] When trial resumed on 28 December 2021, DW1 continued her testimony. However, this time around, DW1's testimony was that the documents requested by the plaintiff, did not exist. The excerpt of her testimony are set out below:

> MSA: Yang Arif, just to let Yang Arif know, the documents that we sought for, just to keep the record updated, Yang Arif, as per the notis permohonan, Yang Arif will remember the number of items we asked are five.

YA: Ok.

MSA: According to notis of permohonan, Yang Arif, not one of them has been provided but instead there are other documents that was provided that are not relevant.

YA: It's not relevant —

MSA: Not relevant to the request.

... continue

MSA: Ok. Puan, sekali dahulu, kita ada membuat permohonan beberapa dokumen untuk dikemukakan ke dalam Mahkamah. Puan masih lagi ingat?

NOR: Ya, saya ingat.

MSA: Ok. Dan Puan telah sedaya-upaya mengemukakan dokumen-dokumen yang kononnya apa yang saya pinta menerusi pihak peguam persekutuan, benar?

NOR: Ya.

MSA: Menerusi peguam persekutuan, ya?

NOR: Ya, betul.

MSA: Alright. Satu saja saya nak kemukakan, kemudian kita beralih kepada soalan-soalan lain. Kalau saya katakan apa yang Puan kemukakan adalah tidak kena-mengena dengan permohonan yang kami minta, apa jawab Puan?

NOR: Yang Arif, saya telah kemukakan seperti yang dimohon sebelum ini.

MSA: 'Saya', apa, sorry?

NOR: Saya telah kemukakan dokumen yang dimohon sebelum ini.

MSA: Menerusi peguam persekutuan?

NOR: Ya, betul.

MSA: Tetapi kalau saya katakan dokumen yang dikemukakan bukanlah dokumen-dokumen yang kita pohon, apa reaksi Puan?

NOR:Saya tak setuju lah, Yang Arif.

[44] The effect of encl 68, the actions of the defendants relating to the documents and the change in DW1's testimony will be discussed in detail in the later part of this judgment.

Summary of the defendants submission

[45] At the conclusion of the trial the defendants took the position that the plaintiff's claim ought to be dismissed for the following reasons (see encl 97):

(a) the plaintiff's claim is time barred by virtue of s 2(a) of the Public Authorities Protection Act;

(b) in view of the fact that Grant 27889 does not exist and cannot legally be enforced, the plaintiff's claim of ultra vires and the fact that the

plaintiff's right under art 13 of the Federal Constitution had been violated cannot be allowed;

(c) the plaintiff have not discharged the burden of proving the damages that they have allegedly suffered;

(d) the plaintiff failed to conduct due diligence exercise before paying the purchase price of the land in full;

(e) the plaintiff failed to mitigate their losses; and

(f) the existence of Grant 27889 is tainted with fraud and illegal connotations. That being the case it is an illegal consideration which also makes the sale and purchase agreement between the plaintiff and Revenue Beam (the vendor) illegal.

[46] In reply to the plaintiff's submissions, the defendants again urged this court to dismiss the plaintiff's claim. In addition, the defendants contended as follows (see encl 99):

(a) there should be no adverse inference against the defendants on their refusal to produce the documents sought vide the plaintiff's discovery application;

(b) the failure of the defendants to plead fraud should not mean that this court ought to rule it out completely; and

(c) the plaintiff did not specify the damages that they are claiming for.

THE PLAINTIFF'S SUBMISSION

[47] Given the bizarre circumstances as to how Grant 27789 was recognised as genuine by the KL Land Office and thereafter cancelled without calling the plaintiff to show cause, learned counsel for the plaintiff's advanced several written submissions for this court's consideration. They can be found in encls 92, 101, 106, 107 and 109.

[48] For purposes of brevity, I do not propose to set out the plaintiff's submissions. To my mind, it would be sufficient for me to just state my findings and rationale for my decision as set out below.

COURT'S ANALYSIS AND FINDINGS

[49] Firstly, based on the evidence adduced by the plaintiff, this court is satisfied that the plaintiff did purchase Lot 152 from the vendor for the purchase price of RM15m. Evidence of this purchase is summarised in the

following table:

TABLE OF MONIES PAID BY RENUKA TOWERS TO REVENUE BEAM

No	Date of payment	Amount of payment	Exhibit T
1	5 June 2007	RM100,000	P26/B5 P3
2	6 June 2007	RM900,000	P27/B5 P4
3	20 July 2007	RM1m	B5 P5
4	20 August 2007	RM2.6m	B5 P6
5	29 August 2007	RM2.6m	B5 P7
6	19 September 2007	RM2.6m	B5 P8
7	18 October 2007	RM2.6m	B5 P9
8	13 December 2007	RM2.6m	B5 P10

[50] Similarly, this court is satisfied that the plaintiff had made the necessary payments toward the stamp duty imposed by LHDN for purposes of the transfer of Lot 152 by the vendor (Revenue Beam Sdn Bhd) to the plaintiff. The plaintiff had also incurred expenses in the form of quit rent paid for Lot 152. Evidence of such payment is captured in the following table:

TABLE OF MONIES PAID BY RENUKA TOWERS TO INLAND REVENUE BOARD OF MALAYSIA

Stamp duty on transfer of the subject land based on the purchase price

No	Date of payment	Amount of payment	Exhibit
1	29 June 2007	RM444,000	P5/B1 at p 10

TABLE OF MONIES PAID BY RENUKA TOWERS TO KL LAND OFFICE

Quit rent on the subject land

No	Date of payment	Amount of Payment	Exhibit
1	2 July 2007	RM16,918	P3
2	15 February 2008	RM16,918	B1 TAB 8
3	7 January 2009	RM16,918	B1 TAB11

TABLE OF MONIES PAID BY REVENUE BEAM AND RENUKA TOWERS TO DEWAN BANDARAYA KUALA LUMPUR

Assessment rent on the subject land

No	Date of payment	Amount of payment	Exhibit
1	15 February 2008	RM67,300	P4
2	8 January 2009	RM67,300	B2 TAB 8
3	2 October 2009	RM67,300	B2 TAB 12

[51] Thirdly, this court is also satisfied that the plaintiff had complied with all formalities required to effect the transfer from the vendor (Revenue Beam) to the plaintiff. This resulted in the second defendant registering Lot 152 in the plaintiff's name wherein the title for Lot 152 was duly issued to the plaintiff. The effect of such transfer is set out in s 215(2) of the NLC which states as follows:

> The title of the transferor shall pass to and vest in the transferee upon the registration of any such transfer, together also with the benefit of any registered interests then enjoyed with the land.

[52] It is important to note that as at 2 July 2007 (being the date of registration of Lot 152 in the plaintiff's name as the registered owner), the subject land was free of any encumbrances. *Thus, I took the view that if the title to Lot 152 ie grant 27889 is*, the plaintiff would absolutely become the legal and beneficial owner of the subject land and the plaintiff's title is therefore indefeasible under ss 89 and 340 of the National Land Code.

[53] I shall now proceed to discuss the issues to be tried as formulated by the parties herein.

The plaintiff's main claim

(a) whether the first and second defendants carried out any functions relating to the enforcement of the land registration system in the state of Wilayah Persekutuan.

Answer: Based on the evidence adduced, it was crystal clear that the first defendant did not carry out any functions relating to the enforcement of the land registration system in Wilayah Persekutuan. The same cannot however be said to be the case for the second defendant. This fact was admitted to by the second defendant in their amended defence and the defendant's *Ringkasan Kes* (see para 27 of encl 18).

(b) whether the act of the second defendant in cancelling the title to the land held under Grant 27889 of Lot 152, Section 58 Negeri Wilayah Persekutuan, District of Kuala Lumpur, Bandar Kuala Lumpur was void, invalid and ultra vires and does not have any legal effect.

Answer: I answer this question in the negative. In a nutshell, despite the plaintiff not being given the right to be heard resulting in a breach of the 'audi alteram partem' principle as explained by the Federal Court in *Dr Lourdes Dava Raj a/l Curuz Durai Raj v Dr Milton Lum Siew Wah & Anor* [2020] 5 MLJ 185, this was done on the premise that that Grant 27889 does not exist and cannot legally be enforced. Thus, the plaintiff's claim of ultra vires and the fact that the plaintiff's right under art 13 of The Federal Constitution had been violated cannot be allowed.

Notwithstanding my above finding, in relation to the plaintiff's

alternative cause of action I am ordering for Grant 27889 to be reinstated. My rationale for ordering so will be discussed in the later part of this judgment.

(c) whether the plaintiff is entitled to the reliefs prayed in para 37(a), dan (b) of the amended statement of claim.

Answer: Under para 37(a) and (b) of the amended statement of claim, the plaintiff sought for the following reliefs:

Paragraph 37(a)

A declaration that the actions of the first and/or the second defendants in 'cancelling' the issue document of title concerning the subject land in the records of the land office of Kuala Lumpur Wilayah Persekutuan is:

(1) null and void;

(2) ultra vires and of no legal effect.

Paragraph 37(b)

That the plaintiff is entitled to be recognised and/or as registered as the lawful proprietor of the subject land pursuant to the rights of the plaintiff as enshrined in art 13 of The Federal Constitution and the National Land Code.

Based on my findings in the plaintiff's alternative claim, I take the view that the plaintiff is entitled to the above reliefs as prayed for in para 37(a) and (b) of the statement of claim.

The plaintiff's alternative claim

[54] Under its alternative claim, the plaintiff's cause of action is premised on the common law tort of negligence and a breach of statutory duty.

[55] In so far as cause of action for negligence is concerned, a plaintiff must establish the following four ingredients:

(a) firstly, he must show that he was owed a duty by the defendant to take reasonable care;

(b) secondly, the defendant breach that duty of care;

(c) thirdly, the defendant's breach resulted in the plaintiff's detriment; and

(d) lastly; the damage suffered by the plaintiff is not too remote

(see *Arab Malaysian Finance Berhad v Stephen Phoa Cheng Loon & Ors* [2003] 1 MLJ 567; [2003] 1 CLJ 585 (CA)).

[56] The plaintiff's claim is also coupled with a cause of action for breach of statutory duty. For this purpose, I find the Australian High Court case of

Crimmins v Stevedoring Industry Finance Committee [1999] 200 CLR 1, judgment of Gleeson CJ to be on point:

> In my opinion, therefore, in a novel case where a plaintiff alleges that a statutory authority owed him or her a common law duty of care and breached that duty by failing to exercise a statutory power, the issue of duty should be determined by the following questions:
>
> 1. Was it reasonably foreseeable that an act or omission of the defendant, including a failure to exercise its statutory powers, would result in injury to the plaintiff or his or her interests? If no, then there is no duty.
> 2. By reason of the defendant's statutory or assumed obligations or control, did the defendant have the power to protect a specific class including the plaintiff (rather than the public at large) from a risk of harm? If no, then there is no duty.
> 3. Was the plaintiff or were the plaintiff's interests vulnerable in the sense that the plaintiff could not reasonably be expected to adequately safeguard himself or herself or those interests from harm? If no, then there is no duty.
> 4. Did the defendant know, or ought the defendant to have known, of the risk of harm to the specific class including the plaintiff if it did not exercise its powers? If no, then there is no duty.
> 5. Would such a duty impose liability with respect to the defendant's exercise of 'core policy-making' or 'quasi-legislative' functions? If yes, then there is no duty.
> 6. Are there any other supervening reasons in policy to deny the existence of a duty of care (e.g., the imposition of a duty is inconsistent with the statutory scheme, or the case is concerned with pure economic loss and the application of principles in that field deny the existence of a duty)? If yes, then there is no duty.

ANALYSIS ON ISSUE TO BE TRIED

[57] Having set out the legal principles applicable to the plaintiff's alternative claim for negligence and/or breach of statutory duty, my analysis and findings on the issue to be tried concerned, are set out below:

(a) whether the first and second defendant exercised any function in relation to s 27 of the NLC?

Answer:

I answer this question in the affirmative in relation to the second defendant only. As it stands. the defendants have already conceded that only the second defendant exercises the functions related to s 27 of the NLC (see paragraph the defendant's *Ringkasan Kes* at encl 18);

(b) whether the plaintiff's alternative claim based on the searches carried at the second defendant's office is time barred due to limitation?

Answer:

I answer this question in the negative. In so far as I am concerned this issue was already raised by the defendants at the early stage of the present case.

Under encl 5, the defendants sought to strike out the plaintiff's claim under O 18 r 19(1) of the Rules of Court 2012, inter alia, on the premise that it was time barred by virtue of s 2(a) of the Public Authorities Protection Act (see encl 5). This application was duly dismissed by Justice Nik Hasmat on 16 July 2014.

The defendants' appeal against Justice Nik's decision was also dismissed by the Court of Appeal (see also subs in encl 101).

(c) whether the second defendant had any duty to the plaintiff for the search results allegedly carried out at the second defendant's office?

Answer:

I answer this question in the affirmative. It is my considered view that the second defendant had a duty to ensure that information contained in its system is accurate and safe for member of the public including a company such as the plaintiff to rely upon for purposes of entering into a commercial transaction. Failure to ensure and maintain the correctness of such information lays grounds to a claim for negligence similar to the present suit.

Support for this finding can be found in the judgment of Zulkefli Ahmad Makinudin CJM (as he then was) in *Pendaftar Hakmilik, Pejabat Pendaftaran Wilayah Persekutuan Kuala Lumpur & Anor v Poh Yang Hong* [2016] 6 MLJ 413; [2016] 9 CLJ 297 where the Federal Court held as follows:

> (1) A common law duty of care could arise in the performance of a statutory function. The Land Administrator and the third defendant owed a duty of care to ensure that when searches are made by members of the public at the Land Registry, they would be acting on accurate information and a properly maintained and accurate Register of Titles. Their duty of care in the context of the present case is two folds. Firstly, there is the statutory duty under the NLC to maintain the register of all lands caused to be registered at the Registry, and in particular to ensure that the information contained in the Register is correct, true and accurate and reflects the true and actual description of the title to the land as well as the true identity of the registered proprietor thereof.
>
> Secondly, there is the common law duty of care whereupon there can be a claim for negligence for the same alleged wrong. (paras 31, 35 & 37)
>
> (2) There has been a breach of the statutory duty imposed on the second defendant Land Administrator/Registry for its negligence in the manner in which it has maintained its record resulting in the loss to the plaintiff. Administrative shortcomings amounting to negligence and breach of duty could not absolve the Land Administrator from a claim

of damages suffered by an aggrieved party who relied on the accuracy of the records maintained at the Land Registry. (paras 28 & 35).

(3) There is a clear distinction between a claim for compensation provided under s 386 of the NLC, and a claim for damages under the common law for an act of negligence by the second defendant in its maintenance of the records of the Register of Titles. In the present case, the plaintiff's claim in the matter is simply for damages under the common law and not for relief of compensation under s 386 of the NLC. The High Court Judge was hence correct in concluding that the second defendant was liable and owed a duty of care to the plaintiff in the circumstances of the case. (paras 32 & 33).

(4) There can be no difference between a 'private search' and an 'official search' as provided for under the NLC insofar as it relates to the issue of liability arising from a common law claim of damages for the negligent act of the second defendant in its maintenance of the records of the Register of Titles. There is also nothing in ss 384 and 385 of the NLC that excludes the liability of the second defendant from a common law claim of the tort of negligence. For the reasons adumbrated, it is not necessary for this court to answer the sole questions posed. (paras 39 & 40).

(d) whether the second defendant breached that duty of care?

Answer:

I answer this question in the affirmative. Based on the above Federal Court decision in *Pendaftar Hakmilik, Pejabat Pendaftaran Wilayah Persekutuan Kuala Lumpur & Anor v Poh Yang Hong*, it is clear that the second defendant has a statutory duty under the NLC to maintain the register of all lands caused to be registered at the registry. This includes the duty to ensure that the information contained in the register is correct, true and accurate and reflects the true and actual description of the title to the land as well as the true identity of the registered proprietor thereof.

In this regard, the registration system could only be access by the second defendant's personnel and agents. I am satisfied beyond the shadow of doubt that the failure of the second defendant to maintain the land registration system resulted in the issuance of Grant 27889 tantamount to a breach of duty of care. This in turn paved way for members of the public such as the plaintiff to be able to do land searches related to Lot 152.

The fact that the second defendant had entered the private caveat by Cabaran Performa Sdn Bhd on Lot 152, the entry of the registrar's caveat and registration of the transfer of Lot 152 from the vendor to the plaintiff clearly shows that Lot 152 bearing Grant no 27889 (not Grant 17752) officially existed in the second defendant's registration system.

Whilst the defendants had initially alleged that the issuance of Grant 27889 was caused by a few unknown individuals working with the plaintiff, the withdrawal of the charges against PW1 suffices to show that the plaintiff had no part in the fiasco. The entire episode to my mind was an administrative failure giving rise to a claim of negligence despite the learned senior federal counsel's concession that there was a mistake on the side of the second defendant.

(e) whether the plaintiff is entitled to the losses including special damages and is entitled to the reliefs sought under para 37(c) to (h) of the amended statement of claim?

Answer:

Under para cl 37(c) to (h) of the SOC the plaintiff sought for the following reliefs:

(i) cl 37 (c): special damages;

(ii) cl 37 (d): general damages to be assessed by this honourable court;

(iii) cl 37 (e): interest at the rate of 8%pa on the sums awarded in prayer (c) above from the date on which the payments were made by the plaintiff until full and final settlement;

(iv) cl 37 (f): interest at the rate of 8%pa on sums awarded in respect of prayer (d) from the date of Judgment until ful and final settlement;

(v) cl 37(g): cost of this action; and

(vi) cl 37(h): further or other relief as this court deems fit and proper.

Except for the plaintiff's prayer for costs, I opine that the reliefs sought are inappropriate. It must be borne in mind that in a claim for negligence, the damages suffered by a plaintiff must be foreseeable and not too remote. Applying this principle to the present case, it is my considered view that the damages sought by the plaintiff in the sum of RM15m plus RM87.5m was not foreseeable and thus too remote. Any loss of the offer from Macalister (see para 52 of encl 109). in my view would be pure economic loss which is not recoverable under our jurisprudence in negligence as stated by the Federal Court in *Majlis Perbandaran Ampang Jaya v Stephen Phoa Cheng Loon* [2006] 1 MLJ 710; [2006] 2 CLJ 1.

In light thereof, I am inclined to go along the lines of the prayer expressed in cl 37(h) by 'granting further or other relief as this court deems fit and proper'. In doing so, I am well guided by the cases set out below:

(1) *Lim Eng Kay v Jaafar Mohamed Said* [1982] 2 MLJ 156 at p 160; [1982] CLJ Rep 190 at p 198:

> Any other relief which this Honourable Court deem fit to grant' must

not be treated as a mere ornament to pleadings devoid of any meaning. We think that this prayer and the prayer for 'loss of earning' in para 5(a) should entitle the Court to make such an assessment.

(2) *Pentadbir Tanah Daerah, Pontian & Ors v Ossons Ventures Sdn Bhd* [2009] 6 MLJ 182; [2009] 6 CLJ 713 (see paras 28–31 of the judgment):

[28] Though the prayers in the statement of claim did not specifically pray for the declaration as made by the High Court, the High Court had power to make the declaration because O 14A r 2 empowers the court to 'make such order or judgment as it thinks just' upon determination of the question of construction of a document arising in the cause or matter. The order which may be made under O 14A is not restricted to the prayers in the statement of claim.

[29] Further, in fairness to the respondent, prayer (18) in the statement of claim did contain a general prayer which had been upheld by the Federal Court to be effective in allowing courts to make such order as may be necessary to serve the ends of justice.

Prayer (18) reads:

Lain-lain perintah yang difikirkan suai manfaat oleh mahkamah yang mulia ini.

[30] In *Lim Eng Kay v Jaafar Mohamed Said* [1982] 2 MLJ 156; [1982] 2 CLJ 298; [1982] CLJ Rep 190, the plaintiff there had failed to plead pretrial loss of earnings as special damages, However, the Federal Court held that the prayer for such 'other relief which the court deems fit to grant' was sufficient to enable the court to make an award of loss of earnings to the plaintiff. It was held by the Federal Court (p 198) that:

We cannot see how the respondents should be deprived of his right by a purely technical error on the part of his solicitors. In any case prayer (e) in paragraph (7), 'Any other relief which this Honourable Court deems fit to grant' must not be treated as a mere ornament to pleadings devoid of any meaning. We think that this prayer should entitle the court to make such an assessment.

(3) *Lee Yee v Lee Kai & Ors* [2020] MLJU 1902 (at paras 15, 62 and 108 of the judgment):

If on such application the Court is of the opinion that either of those grounds is established, the Court may make such order as the Court thinks fit with the view to bringing to an end or remedying the matters complained of, and without prejudice to the generality of subsection (1), the order may—

[62] We therefore agree with the submissions that were made on behalf of the plaintiff, that s 346 of the CA 2016 places no limits on what the

Judge can do in terms of fashioning or moulding the relevant relief that is appropriate in relation to the particular case at hand. In this context, it is relevant to note that s 346(2) of the CA 2016 provides that:

(2) If on such application the Court is of the opinion that either of those grounds is established, the Court may make such order as the Court thinks fit with the view to bringing to an end or remedying the matters complained of, and without prejudice to the generality of subsection (1), the order may —

(a) Direct or prohibit any act or cancel or vary any transaction or resolution;

(b) regulate the conduct of the affairs of the company in the future.

[108] As stated earlier, under s 346(2) of the CA 2016, the court has a wide array of reliefs at its disposal. The court's discretion to grant relief is unfettered. The court can mould the appropriate relief. Indeed, the court could even order a winding up of D3. But that would depend on the circumstances. It could also order a share buy-out in lieu of a winding-up. In this regard, the court could follow the Cast Iron Products route and order a share buy-out on the basis of a share valuation which takes into account all the defalcated sums. Again, that is a matter of discretion for the judge to decide at the end of the day.

FINDING OF ADVERSE INFERENCE

[58] Regrettably, I have to agree with the submissions by the plaintiff's learned counsel that this court ought to invoke the presumption of adverse inference against the defendants (see *Union of India v Ibrahim Uddin & Anor* (2012) 8 SCC 148 where it was held that if one party has asked the court to direct the other side to produce document and the other side failed to comply with the court's order, the court may be justified in drawing the adverse inference). In this respect, I find the change in DW1's testimony as to the non-existence of the documents requested under encl 68 very alarming given the fact that it was the earlier testimony of DW 1 given on 6 December 2019, which prompted the filing of encl 68 in the first place. The change in her testimony during futher cross-examination on 28 December 2021 is equally alarming that I cannot find her to be a credible witness (see the plaintiff's written subs at encl 109).

[59] Given the fact that the first defendant, being the registered owner of the land held under Grant 17752 too did not provide any evidence of such ownership by producing the manual title or any documents to proof that the subject land was alienated or owned by them, the adverse presumption would be that:

(a) there was no such evidence of the first defendant's actual ownership of the land which the defendants alleged existed much earlier than the issuance of Grant 27889; and

(b) any claimed or records, if produced by the defendants, would be contrary to their claim.

[60] In concluding so, I find support in the case of *Shayo (M) Sdn Bhd v Nurlieda bt Sidek & Ors* [2013] 7 MLJ 755. The facts of the case are as follows:

> The plaintiff, was the registered proprietor of a plot of land situated in the state of Perak ('the land'). At all material times, they had uninterrupted physical possession and enjoyment of the land. Throughout the years until 2010, the plaintiff duly received the quit rent bills for the land in its name. However, in 2010 and 2011, the quit rent came in the name of the fourth defendant. Upon checking with the Perak Land Office, the plaintiff discovered that they were no longer the registered proprietor of the land. This was due to the action of the eighth to the 12th defendants embarking upon an exercise to convert the land titles in Perak to a computerised issue document of title ('computerised IDT'). During this exercise a computerised grant (issue document of title @ IDT) in respect of the plaintiff's land had been issued in the name of the first defendant on 12 June 2002. This occurred notwithstanding the fact that the manual IDT was in the possession and custody of the plaintiff. The plaintiff also discovered that their land, which was registered in the name of the first defendant, had changed hands another three times: Firstly, from the first defendant to the second defendant ('the first sale'); Secondly, from the second defendant to the fourth, fourth and fifth defendants ('the second sale'); and thirdly, from the third, fourth and fifth defendants to the sixth defendant ('the third sale').
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> Subsequently, on 8 March 2011, the sixth defendant entered into a sale and purchase agreement to sell the land to the 7th defendant. Upon the plaintiff lodging a police report complaining about its dispossession of ownership to the land, a registrar's caveat was caused to be entered to protect the plaintiff's interests. Without the knowledge of the plaintiff, the registrar's caveat was removed. This in turn, allowed the seventh defendant to become the registered proprietor of the land. The plaintiff, then commenced action to restore itself as the rightful proprietor of the land.
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> The plaintiff contended that the computerised IDT which entitled the first defendant to be the owner of the land was null and void as it was issued in contravention of the provisions of the NLC. The plaintiff further contended that the subsequent transfers of the land were also null and void and the titles of the first to seventh defendants were defeasible.
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> The plaintiff in addition contended that the eighth to 12th defendants were grossly negligent and in breach of their statutory duties in failing to protect his interest as the registered proprietor of the land.
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> In response to the plaintiff's claim, the second to fifth defendants contended that they were bona fide purchasers for valuable consideration and that in the event the transfers were declared to be invalid they would seek contributions from the eighth

to 12th defendants for the losses they had sustained. The sixth defendant contended that it was for the eighth to 12th defendants to compensate the seventh defndant for the latter's loss. The seventh defendant claimed that he was a bona fide purchaser for value and counterclaimed for vacant possession of the land. The eighth to 12th defendants denied any negligence or breach of statutory duty and contended that they had carried out their duties in good faith.

[61] At the end of the trial, Harminder J (now FCJ), inter alia, held as follows:

(1) In the instant case, there were now two titles to the land, namely the original manual IDT in the plaintiff's possession, which was the valid title, and the second computerised IDT in the name of the first defendant, which ought not to have been issued. The issuance of the second title was without doubt due to a grave failure by the eighth to 12th defendants to adhere to the strict mandatory provisions set out in the 14th Schedule of the NLC. The plaintiff was never issued with the computerised IDT in its name as was required under the 14th Schedule and there was also no cancellation or destruction of the manual IDT in the plaintiff's name and possession. As such, the issuance of the computerised IDT in the name of the first defendant was ultra vires and unlawful with the effect that any other instruments executed thereon would also be void and liable to be set aside at the instance of the plaintiff as the rightful registered proprietor. In view of the void title at its inception, subsequent bona fide purchasers for value could not avail themselves of the protection afforded by the proviso to s 340(3) of the NLC. Further, a distinction had to be drawn between the instant case and other cases in which the instruments under attack were the subsidiary instruments and not the title itself. In the end result, the title issued to the 7th defendant had to be cancelled and the plaintiff restored as the registered proprietor and the true legal and beneficial owner of the land (see paras 32–35 & 37).

(2) The evidence served to confirm that the eighth to 12th defendants had failed to ensure reasonable or adequate security of their computer system. In addition, considering the evidence in its entirety, the irresistible supposition was that there was fraud going on within the offices of the eighth to 12th defendants. It was also noted that no inquiry had been conducted to ascertain how the first defendant was issued with a computerised IDT and that no registrar's caveat was lodged even after a report disclosed that something was seriously wrong with the land. Based on the state of affairs as they stood, it was safe to conclude that the eighth to 12th defendants had fallen short of the standard that was to be expected of a public authority and its officers. In short, they were grossly negligent and in breach of their statutory duties. In the premises the plaintiff and the seventh defendant had established liability on the part of the eighth to 12th defendants for which the plaintiff was entitled to an order in terms and the seventh defendant was entitled to be indemnified (see paras 49, 53 & 60).

[62] Similar to the facts herein, the court in *Shayo* decided that D8–D12 (being the State of Perak Land office and the PTG for the state of Perak etc) had fallen far short of the standard that is expected of a public authority and its

officers. They were held to be grossly negligent and in breach of their statutory duty.

RELIEF AS ORDERED BY THIS COURT

[63] Having analyze the entire factual matrix of the present case and the finding of negligence and breach of statutory duty by the second defendant, this court takes the view that loss of one's land was definitely foreseeable. Coupled with the fact that there was no evidence to show when Grant 17752 came into being on the defendants' failure to provide the documents sought by the plaintiff vide encl 68, the position taken by the defendants in not producing the documents concerned particularly the original manual grant for Grant 17752 does not leave this court with much choice as only the computerized title Version 2 dated 7 April 2016 was produced as exh D34 (the oral testimony by DW1, where she testified that each time a particular dealing is entered in the system for a particular piece of land, the print out of the title will state the version number of the title. In this regard, DW1 testified that exh D34 was printed on 7 April 2016. There was no explanation as to the whereabouts of Version 1 nor the manual title).

[64] In determining the appropriate relief to be granted to the plaintiff herein, I found guidance in the case furnished by their learned counsel:

Uptown Properties Sdn Bhd v Pentadbir Tanah Wilayah Persekutuan & Ors [2012] 8 MLJ 713, the facts of which are set out below:

> The plaintiff was the registered proprietor of a vacant piece of land held under lot 1599, which was located in Old Klang Road ('the land'). Despite holding the original document of title and making regular payments of the quit rent, the plaintiff discovered that the fifth defendant had become the registered proprietor of the land. The plaintiff then initiated a discovery action against the first defendant. Through this discovery the plaintiff learned that in the course of a computerisation exercise carried out by the first defendant in 1993, the fourth defendant became named as the registered proprietor of the land. The first defendant's mistake in typing the name of the fourth defendant in the computer particulars instead of the plaintiff resulted in the fourth defendant being issued with the computerised document of title to the land. It was also found that the fourth defendant was not a duly registered company with the Suruhanjaya Syarikat Malaysia ('SSM'). However, sometime in December 2004, the fourth defendant had transferred the land to the 5th defendant, who had in turn charged the land to the sixth defendant to finance the purported purchase of the land.
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> Despite, the plaintiff having custody of the original IDT to the land, the fifth defendant became the registered proprietor of the land, by virtue of the computerised title issued by the first defendant.
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> The plaintiff then commenced action against the defendants claiming that the duplicate title that was issued by the first defendant to the fourth defendant was void pursuant to s 340(2)(c) of the NLC. The plaintiff contended that the transfer of the

land to the fifth defendant was by means of a void instrument under s 340(2)(b) and thus, was liable to be set aside as it was defeasible.

In their defence, the first, second and third defendants pleaded that they had made a mistake and maintained that the mistake in question was a genuine mistake. As for the fifth and sixth defendants, they pleaded tat they were bona fide purchasers for valuable consideration.

[65] At the end of the trial, Prasad Abraham J (later FCJ) held as follows:

(1) The mistake of the first, second and third defendants, in describing the fourth defendant as the registered proprietor of the land and issuing it with a duplicate title, was unlawful and ultra vires. The title or interest of the fourth defendant on being registered as the registered owner of the land was obtained by means of a void instrument and was unlawfully obtained as it had been clearly established that there had been a mistake in the entering of the fourth defendant as the registered proprietor of the land. The first defendant's act of issuing a duplicate computerised title in the name of the fourth defendant when the land continued to be in the possession of the plaintiff coupled with the breach of the 14th Schedule to the NLC Amendment Act 1932 rendered the registration of the fourth defendant as proprietor void pursuant to s 340(2)(c) of the NLC. Since the act of issuing the fourth defendant with a duplicate title was unlawful and ultra vires, any instrument executed by the fourth defendant in favour of the fifth and sixth defendants as vendors of the land would be void as being by way of an insufficient instrument pursuant to s 340(2)(b) of the NLC, and thus liable to be set aside under the principle of deferred defeasibility. This was especially so in view of the fact that the fourth defendant was not a company registered with the SSM and did not exist as an entity (see paras 14, 19 & 23).

(2) The maintenance of a land registry that was efficient and maintained accurate particulars was a duty that the first defendant owed to every member of the public who made and relied on a search made at the land registry maintained by the first defendant. This general reliance meant that the first defendant owed a duty of care to the fifth and sixth defendants to ensure that when searches were made at the land registry, they would be acting on accurate information and a properly maintained and accurate register of titles. Based on the evidence of the present case, this court found that the first defendant had not acted in good faith and would be disqualified from the protection of s 22 of the NLC. This court thus allowed the notice of contribution for the fifth and sixth defendants against the first, second and third defendants with damages to be assessed by the timbalan pendaftar (see paras 30 & 37).

(3) Administrative shortcomings amounting to negligence and breach of duty could not justify the plaintiff being disposed of its interest in the land and the fact that it had happened was a violation of the plaintiff's constitutional right under art 13 of the Federal Constitution ('Constitution') . The first defendant owed a duty of care to ensure that by

its own mistakes and negligence, the rights of the plaintiff enshrined in art 13 of the Constitution were not rendered nugatory (see paras 32–33).

[66] The plaintiff's position in the present case is far worse than in the Uptown case. I conclude so for the following reasons: Firstly, the negligence of the second defendants had allowed unscrupulous parties (in all probability individuals working within the organization) to infiltrate its land registration system. *This enabled them to create fictitious land titles similar to Grant 27789 and causing issuing land titles using genuine security paper kept within the organization*. Secondly, the negligence of the second defendant, *allowed these unscrupulous parties to create a database showing that the land concerned e xisted*. This is evident from the results of the land searches carried out not only by the plaintiff but also by the defendants as well. Thirdly, the act performed by the third parties even fooled the second defendant's computerized registration system and its personnel too. Any member of the public such as the plaintiff could not have fared any better. This enabled the system to receive transactions such as the lodging of the caveat by Cabaran Performa, the transfer of the land from Revenue Beam to the plaintiff and the registrar's caveat. Fourthly, due to no fault of the plaintiff, their title was cancelled without any notice or explanation given. As a result, the plaintiff suffered tremendous loss and damages.

[67] Similar to the decision in *Uptown*, I hold that the cancellation of Grant 27889 by the third defendant is wrong in law and void ab initio. In the upshot, the title to Grant 17752 has to be cancelled and the plaintiff restored as the registered proprietor and the true legal and beneficial owner of Lot 152.

[68] For the sake of completeness, I must add that as the second defendant is an employee of the fourth defendant, the latter is indeed liable for the negligence caused by the second defendant (see the Federal Court decision in *Lay Kee Tee & Yang lain v Kerajaan Malaysia & yang Lain* [2005] 3 MLJ 576; [2004] 8 CLJ 390).

COSTS

[69] Having heard brief submission from counsel on the issue of costs, considering the length of the trial, the complexity of issues and the getting up done towards the submissions both written and oral, I find a sum of RM50,000 (subject to allocator) is reasonable towards the cost of the trial. I order so accordingly.

A *Plaintiff's alternative claim allowed.*

Reported by Ashok Kumar

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